IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action

VS.

No. 02-19 E

CURTIS LASHAWN DUCK,

Defendant.

Transcript of proceedings on February 10, 2003, United States District Court, Erie, Pennsylvania, before Maurice B. Cohill, Jr., District Judge

APPEARANCES:

For the Government: Christian Trabold, Esq.

For the Defendant: Stephen Misko, Esq.

Court Reporter: Richard T. Ford, RMR, CRR

1023-B U.S. Courthouse Pittsburgh, PA 15219

(412) 261-0802

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription

1 (Proceedings held in open court; February 10, 2003). 2 THE COURT: As I understand it, Mr. Misko, your 3 client has indicated a desire to plead quilty to Count 1 of 4 the indictment that was filed here? 5 MR. MISKO: Yes, Your Honor. 6 THE COURT: Before accepting a guilty plea there 7 are a number of questions that I am going to want to ask you, 8 Mr. Duck, to assure that this is a valid plea. If you don't 9 understand any of my questions or at any time wish to consult 10 with Mr. Misko, please say so, because it's essential to a 11 valid plea that you understand each question before you answer 12 it. Do you understand that? 13 THE DEFENDANT: Yes. 14 THE COURT: You have to say yes or no so he can 15 write it down. 16 THE DEFENDANT: Yes, Your Honor. 17 THE COURT: Will you administer the oath, please. 18 Would you stand and be sworn, please. 19 (Defendant duly sworn). 20 THE COURT: Do you understand that now that you 21 have been sworn and that your answers to my questions are 22 being given under oath, that you will be subject to the 23 penalties of perjury or of making a false statement if you do 24 not answer truthfully? 25 THE DEFENDANT: Yes, Your Honor.

1	THE COURT: Will you state your full name for the
2	record, please.
3	THE DEFENDANT: Curtis Lashawn Duck.
4	THE COURT: What is your date of birth?
5	THE DEFENDANT: 7/9/73.
6	THE COURT: What's your address?
7	THE DEFENDANT: 5149 Henderson Road.
8	THE COURT: Erie?
9	THE DEFENDANT: Yes.
10	THE COURT: How far did you go in school?
11	THE DEFENDANT: 12th grade.
12	THE COURT: Mr. Misko, have you been able to
13	communicate with Mr. Duck in the sense that you believe he
14	understands you and you understand him?
15	MR. MISKO: Yes, Your Honor.
16	THE COURT: Mr. Duck, are you currently or have you
17	recently been under the care of a physician or psychiatrist?
18	THE DEFENDANT: No, Your Honor.
19	THE COURT: Have you been hospitalized or treated
20	for narcotics addiction?
21	THE DEFENDANT: No, Your Honor.
22	THE COURT: Have you been hospitalized or treated
23	for alcohol abuse?
24	THE DEFENDANT: No, Your Honor.
25	THE COURT: Have you been hospitalized or treated

1 for any sort of mental illness? 2 THE DEFENDANT: No, Your Honor. 3 THE COURT: Are you under the influence of any 4 narcotic drug, medicine, pills, or alcoholic beverage today? 5 THE DEFENDANT: No, Your Honor. THE COURT: Have you taken any drugs, medicine, or 6 7 pills or drunk any alcoholic beverages in the past 24 hours? 8 THE DEFENDANT: No, Your Honor. 9 THE COURT: How do you feel physically and mentally 10 right now? 11 THE DEFENDANT: I'm in good condition. I feel all 12 right. 13 THE COURT: Tell me again. 14 THE DEFENDANT: I feel fine, Your Honor. 15 THE COURT: Do you clearly understand exactly 16 what's happening here? 17 THE DEFENDANT: Yes, Your Honor. 18 THE COURT: Do either of you attorneys have any 19 doubt as to the Defendant's competence to plead at this time? 20 MR. TRABOLD: No, Your Honor. 21 MR. MISKO: No, Your Honor. 22 THE COURT: Based on the answers to the foregoing 23 questions we find that the Defendant is competent to plea. 24 Have you had an ample opportunity to discuss your 25 case with Mr. Misko?

1 THE DEFENDANT: Yes, Your Honor. 2 THE COURT: Have you told him all of the facts in 3 connection with the charges? 4 THE DEFENDANT: Yes, Your Honor. 5 THE COURT: Are you satisfied with the job that he's done for you? 6 7 THE DEFENDANT: Yes, Your Honor. 8 THE COURT: Mr. Trabold, Mr. Misko, and Mr. Duck, 9 maybe it would be easier if you folks all came forward. 10 I want to go over with you now just what your 11 constitutional rights would be if this case were to go to 12 trial, Mr. Duck. Do you understand that under the 13 Constitution and laws of the United States you are entitled to 14 a speedy and public trial by a jury on the charges contained 15 in the indictment? 16 THE DEFENDANT: (Defendant nods head). 17 THE COURT: You have to say yes or no. 18 MR. TRABOLD: You have to say yes or no. 19 THE DEFENDANT: No. 20 (Defendant and his counsel confer off the record). 21 THE DEFENDANT: Yes, I understand. 22 THE COURT: Do you understand you have a right to 23 an attorney at every stage of the proceedings in your case and 24 if at any time you can't afford an attorney, one will be 25 provided for you without charge?

1 THE DEFENDANT: Yes, Your Honor. 2 THE COURT: Do you understand that at your trial 3 you would be presumed to be innocent and the Government would 4 be required to prove you quilty by competent evidence and 5 beyond a reasonable doubt to the satisfaction of the judge and 6 the unanimous jury? 7 THE DEFENDANT: Yes, Your Honor. 8 THE COURT: Do you understand that being presumed 9 to be innocent means that you would not have to prove that you 10 were innocent? 11 THE DEFENDANT: Yes, Your Honor. 12 THE COURT: Do you understand that at the trial the 13 witnesses for the Government would have to come to court and 14 testify in your presence; and your attorney or you could 15 cross-examine the witnesses for the Government, object to 16 evidence offered by the Government, and offer evidence on your 17 behalf? 18 THE DEFENDANT: Yes, Your Honor. 19 THE COURT: Do you understand that at the trial you 20 would be entitled to compulsory process to call witnesses; 21 that is, you could subpoena witnesses and compel them to come 22 to court to testify for you? 23 THE DEFENDANT: Yes, Your Honor. 24 THE COURT: Do you understand that at the trial you 25 would have the right to testify, if you chose to do so, but

you would also have the right not to testify; and no inference or suggestion of guilt could be drawn from the fact you did not testify?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If you do enter a plea of guilty today, do you understand that you will be waiving your right to a

do you understand that you will be waiving your right to a trial and the other rights that I have just described, there will not be a trial of any kind, and I will enter a judgment of guilty and sentence you on the basis of your guilty plea after considering a presentence report?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If you do enter a plea of guilty today, do you understand that you will also have to waive your right not to incriminate yourself since I will ask you questions about what you did in order to satisfy myself that you are guilty, and you will have to acknowledge your guilt on the record?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that any statements regarding the offense you may have made to the US Attorney during the course of any plea negotiations could not be used against you in a trial of this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Having discussed these rights with you, is it still your wish to enter a plea of guilty this morning?

1 THE DEFENDANT: Yes, Your Honor. 2 THE COURT: And you have received a copy of the 3 indictment here? 4 THE DEFENDANT: Yes, Your Honor. 5 THE COURT: Have you gone over that with Mr. Misko? 6 THE DEFENDANT: Yes, Your Honor. 7 THE COURT: I am not going to read -- as I 8 understand it, it's the first count to which he is going to 9 plead, Mr. Misko? 10 MR. MISKO: Yes, Your Honor. 11 THE COURT: I am not going to read the whole thing 12 to you, it is about three pages -- more than that, it is about 13 four or five pages long. But in this case generally you are 14 charged with conspiring to steal mail from a mail truck, then 15 later on using various, three women, Annette Lucas, Maranda 16 Bishop, and Twanda Davis -- and Erica Dunston too, I guess --17 in an attempt to cash these checks using false identification. 18 That's the general charge. Do you understand that? 19 THE DEFENDANT: Yes, Your Honor. 20 THE COURT: And you have been over that with 21 Mr. Misko? 22 THE DEFENDANT: Yes. 23 MR. MISKO: Yes, Your Honor. Just for the record, 24 we have reviewed this, and according to Paragraphs A, C, and E 25 of the indictment, Mr. Duck is alleged to have known that --

is alleged to have come into possession of stolen mail and driven two of the co-Defendants to various locations.

THE COURT: You agree that's a fair statement of what happened here?

THE DEFENDANT: Yes.

THE COURT: Now I want to go over just what it is the Government would have to prove had this case gone to trial, Mr. Duck. They are what are called elements of an offense. In any criminal case the Government has to prove so-called elements.

The elements of a conspiracy the Government would have to prove are these: First, that you and at least one other person knowingly and willfully agreed or conspired, either expressly or tacitly, to commit the offenses against the laws of the United States that are described in the indictment. That is, to falsely make or forge any endorsement or signature on a treasury check or bond or security of the United States and/or pass, utter, or publish any treasury check or bond or security of the United States bearing a false or forged endorsement or signature, and/or to possess stolen mail. That's the first element they would have to prove. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Secondly, they would have to prove that it was part of the agreement or conspiracy to carry out or

commit the offenses described in the indictment as objectives 1 2 of the conspiracy. 3 Third, that you willfully became a member of the 4 conspiracy. 5 Fourth, that at least one of the coconspirators 6 thereafter knowingly committed at least one overt act in 7 furtherance of the conspiracy. And there is a whole list of 8 overt acts in Count 1 of the indictment. 9 And, fifth, that such overt act was knowingly done 10 in furtherance of some object or purpose of the conspiracy. 11 That's what the Government would have to prove to 12 get a conviction on conspiracy. Do you understand that? 13 THE DEFENDANT: Yes, Your Honor. 14 THE COURT: Now, I want to go over with you the 15 possible punishments here. 16 There are two kinds of punishments that we have to be concerned about. First of all are what the United States 17 18 Criminal Code says; then, secondly, what the so-called 19 sentencing quidelines say. 20 Now, the statute says this: It calls for --21 conspiracy of the nature described in this indictment calls 22 for a term of imprisonment of not more than five years; a fine 23 not to exceed \$250,000; and a term of supervised release of at 24 least three years.

And, in addition to that, a maximum fine of not

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more than \$250,000 or twice the amount that someone was caused to lose as a result of this action. So, in other words, you can be ordered to repay anybody that lost money as a result of this conspiracy. You can also be fined twice that amount. Do you understand that? THE DEFENDANT: Yes, Your Honor. THE COURT: Now, in that conspiracy, you might remember when I was reading to you what the elements are, the statute talks about that you entered the -- that the person being charged entered the conspiracy knowingly and willfully. Those are important words in the eyes of the law. First of all, the term "knowingly" means to act voluntarily and deliberately, rather than by mistake or inadvertence. Do you understand that? THE DEFENDANT: Yes, Your Honor. THE COURT: And an act is said to be done willfully in the law if it's done voluntarily and intentionally and with specific intent to do something that the law forbids. That is to say with bad purpose either to disobey or disregard the Do you understand that? law. THE DEFENDANT: Yes, Your Honor. THE COURT: And a criminal conspiracy is said to be an agreement or a mutual understanding knowingly made or

knowingly entered into by at least two people to violate the

law by some joint or common plan. So a conspiracy is said to

be in a very true sense a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal or written or expressed directly in every detail. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, in order to prove conspiracy, the Government would have to prove that you knowingly and willfully arrived at some type of agreement or understanding that you and at least one other person would commit an offense against the United States by some plan or common plan or course of action. And in order to establish your membership in such a conspiracy, the Government would have to prove beyond a reasonable doubt that you knew the purpose or goal of the agreement, intending in some way to accomplish the goal or purpose of this common plan or joint action.

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at a place where a crime takes place or is discussed, or even knowing about criminal conduct does not of itself make someone a member of the conspiracy or a conspirator. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You believe you do understand the nature of the offense and what the Government would have to

prove? 1 2 THE DEFENDANT: Yes. THE COURT: Now, as I started to say before, we 3 4 also have to concern ourselves with the so-called sentencing 5 quidelines. Have you and Mr. Misko talked about how the 6 guidelines might apply in your case? 7 THE DEFENDANT: Yes, Your Honor. 8 THE COURT: Do you understand that I won't be able 9 to determine the quideline sentence for your case until after 10 a presentence report has been completed and you and the 11 Government have had an opportunity to challenge any facts that 12 you might disagree with that are reported by the probation 13 officer? 14 THE DEFENDANT: Yes, Your Honor. 15 THE COURT: Do you understand that the sentence might be different from what either your attorney or the 16 17 United States Attorney predicted? 18 THE DEFENDANT: Yes, Your Honor. 19 THE COURT: Do you understand that after it has 20 been determined what guideline applies in a case, the Judge 21 has the authority, in some circumstances, to impose a sentence 22 that's more severe or less severe than the sentence called for 23 by the quidelines? 24 THE DEFENDANT: Yes, Your Honor. 25 THE COURT: Do you understand that under some

1 circumstances you or the Government may have the right to 2 appeal any sentence that I might impose? 3 THE DEFENDANT: Yes, Your Honor. 4 THE COURT: Do you understand that parole has been 5 abolished; and if you are sentenced to prison, you will not be 6 released on parole? 7 THE DEFENDANT: Yes, Your Honor. 8 THE COURT: Mr. Duck, has anyone threatened you or 9 anyone else or forced you in any way to indicate you want to 10 plead quilty in this case? 11 THE DEFENDANT: No, Your Honor. 12 THE COURT: Maybe Mr. Misko and Mr. Trabold can 13 answer this. Has he made any confession or admissions to the 14 police or other representatives of the Government concerning 15 this matter? 16 MR. TRABOLD: He did make a statement to the 17 police. Whether it's a confession or not I guess is arguable. 18 But he did make a statement. 19 THE COURT: If for any reason you feel that any 20 statement you made was not freely and voluntarily made, you 21 would have the right to have the Court conduct what's 22 sometimes called a suppression hearing prior to trial and have 23 me determine if the confession or statement was freely and 24 voluntarily made. Would you want me to conduct a hearing like 25 that?

THE DEFENDANT: No, Your Honor. 1 2 THE COURT: And I take it there has been a plea 3 agreement entered into, Mr. Trabold? 4 MR. TRABOLD: Correct, Your Honor. 5 THE COURT: I am going to ask Mr. Trabold to tell 6 me what's in that plea agreement. I want you to listen 7 carefully because then I will ask you and Mr. Misko if you 8 agree that what he says is in there. 9 MR. TRABOLD: Your Honor, I have marked the plea 10 agreement as Government Exhibit 1. It indicates that Mr. Duck 11 will plead guilty to Count 1 of the indictment and accept responsibility for his conduct at Count 7. In exchange, the 12 13 Government will agree to recommend the dismissal of Count 7 14 after Mr. Duck has been sentenced at Count 1. 15 Additionally, the Government agrees to recommend a 16 reduction of two levels in offense level for acceptance of 17 responsibility. Additionally, Your Honor, although it is not 18 19 written in the plea agreement, the Government in this case has 20 no objection to Mr. Duck being placed in the same position 21 with regard to offense level that the female co-Defendants 22 were placed in this case, which I believe was either a 6 or a 23 5 prior to being accorded the two points for acceptance. 24 Beyond that, I would just move for Government's 1

to be admitted, noting that counsel and Mr. Duck have signed

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it. 1 2 THE COURT: We will admit the agreement as 3 Government Exhibit 1. 4 Is there any restitution to be made here or has 5 that been computed? MR. TRABOLD: I haven't computed the restitution. 6 7 I don't know if he owes restitution or not, to be honest with 8 you, whether there was any actual loss or not, I am not sure. 9 THE COURT: Do you understand even though that 10 hasn't been computed if it turns out someone did lose money 11 from all of this, you and the other Defendants can be required 12 to make restitution; do you understand that? 13 Yes, Your Honor. THE DEFENDANT: 14 THE COURT: Mr. Duck, has anyone made any 15 representation or promise other than what's in that plea 16 agreement that induced you to plead guilty? No, Your Honor. 17 THE DEFENDANT: 18 THE COURT: It is very important that I have been 19 told all the relevant bargaining that's taken place because I 20 want to quard against any possible misunderstanding of the 21 terms of the plea bargain. Is there any representation made 22 by the United States Attorney that's not absolutely clear in 23 your mind? 24 THE DEFENDANT: No, Your Honor. 25 THE COURT: Do you understand that any

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recommendation or sentence agreed to by your lawyer and the prosecution or any agreement by the Government not to oppose your attorney's requested sentence is not binding on me and you might on the basis of your quilty plea receive up to the maximum sentence permitted by law? THE DEFENDANT: Yes, Your Honor. THE COURT: Do you understand that if I choose not to impose a sentence that might be recommended by the prosecutor or by your lawyer and impose a more severe sentence, you will not, therefore, be entitled to withdraw your guilty plea? THE DEFENDANT: Yes, Your Honor. THE COURT: Has anyone made any prediction or promise to you as to what your sentence will be? THE DEFENDANT: No, Your Honor. THE COURT: Have any out of court promises, representations, or agreements been made which require you to respond untruthfully to any of my questions? For instance, has anyone told you to tell me that no promise of leniency was made when in fact a promise was so made? THE DEFENDANT: No, Your Honor. THE COURT: Do you understand that you may not at a later date after today claim that there were any promises, representations, agreements, understandings, or threats made

by any person that motivated or caused you to enter this plea

1 other than those that you had the opportunity to tell me about 2 here and now in open court? THE DEFENDANT: Yes, Your Honor. 3 4 THE COURT: Has anyone promised or predicted 5 leniency with respect to any sentence that I may impose? 6 THE DEFENDANT: No, Your Honor. 7 THE COURT: This is very important because if 8 anyone has predicted or promised leniency, I am putting you on 9 notice right now that any representation they may have made is 10 not binding on me and I will sentence you according to my own 11 conscience and following the law. Do you completely 12 understand this? 13 THE DEFENDANT: Yes, Your Honor. 14 THE COURT: What made you decide to plead guilty, 15 Mr. Duck? 16 THE DEFENDANT: Actually the reason I pleaded 17 guilty is because I didn't want to take it to trial and get 18 found guilty and have a longer term of sentence or whatever 19 may have --20 THE COURT: But you do admit being involved in what 21 the indictment charges you with? 22 THE DEFENDANT: Yes. 23 THE COURT: Is that right? 24 THE DEFENDANT: Yes. 25 THE COURT: I am going to ask Mr. Trabold to tell

me just what it is the Government would expect to be able to prove here, then again I want you to listen carefully to what he says because then I will ask you if you agree with his statement.

MR. TRABOLD: Your Honor, if this case were to go to trial, the Government's evidence would be that on August 31st, 2001, Mr. Duck came into the possession of several United States Treasury checks which had earlier that day been stolen from a US postal vehicle which was parked at the corner of East 11th and Ash Streets in the City of Erie.

One of the checks Mr. Duck came into the possession of was a US Treasury check payable to a Julie Mosakowski, M-O-S-A-K-O-W-S-K-I, made out in the sum of \$856.

Beyond being in possession of those several stolen US Treasury checks, the evidence would be that on August 31st and/or September 1st of 2001, Mr. Duck drove his co-Defendants, Tracy Steele and Erica Dunston, around the City of Erie, knowing at the time that it was their intent, Mr. Steele and Ms. Dunston's intent, to attempt to cash several stolen US Treasury checks.

Specifically, Mr. Duck drove Dunston and Steele to the Quick Cash on State Street for the purpose of Ms. Dunston obtaining a fraudulent identification card so she could cash a stolen US Treasury check. Mr. Duck then drove Mr. Steele and Ms. Dunston to another business establishment for the purpose

1 of Ms. Dunston cashing that check.

Part of the Government's evidence would be a videotaped statement taken from Mr. Duck wherein he admits that he was the driver of the vehicle Mr. Steele and Ms. Dunston were in; however, he denies knowing anything about what their purpose was in being driven around. However, he does indicate that he was there and present at the time that these things occurred.

THE COURT: Is that a fair statement of what happened here, Mr. Duck?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you agree -- is that consistent with your understanding, Mr. Misko?

MR. MISKO: Yes, Your Honor.

THE COURT: I don't know if I mentioned -- we talked about a possible fine and restitution, if any money is owing, but in addition to that, the Court has to impose a \$100 special assessment, and the Court can't waive that. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And reviewing all of these things we discussed here today, Mr. Duck, is it still your wish to enter a plea of guilty on Count 1 and waive your right to a trial by jury?

THE DEFENDANT: Yes, Your Honor.

1	THE COURT: Mr. Misko, over what period of time
2	have you consulted with Mr. Duck?
3	MR. MISKO: Your Honor, we have had discussions at
4	least within the last ten to eleven months.
5	THE COURT: From the facts that he has told you, do
6	you concur in his plea of guilty?
7	MR. MISKO: Yes, Your Honor.
8	THE COURT: Do you know of any reason he should not
9	plead guilty?
10	MR. MISKO: No, Your Honor.
11	THE COURT: Mr. Duck, do you have any question to
12	ask me?
13	THE DEFENDANT: No, Your Honor.
14	THE COURT: Well, since you do acknowledge that you
15	are in fact guilty as charged in Count 1 and based on our
16	discussion today, I find that you know your right to trial,
17	what the maximum possible punishment is, and that you are
18	voluntarily pleading guilty. I will accept your guilty plea
19	and enter a judgment of guilty on your plea.
20	We will ask you to sign the endorsement that
21	Ms. Burkoff is giving you.
22	We note Mr. Duck and Mr. Misko have signed the
23	endorsement indicating today that he is withdrawing his plea
24	of not guilty previously entered and is now pleading guilty.
25	I am ordering a presentence report, Mr. Duck.

1	That's one of the probation officers who will be talking to
2	you. And what's in that report is going to be important as to
3	what the sentence will be. So I urge you to cooperate with
4	him.
5	I have been given a sentencing date of June 11th at
6	9 o'clock in this courtroom. June 11th at 9 o'clock. That's
7	the sentencing date.
8	Does the Government have any objection to present
9	bond being continued?
LO	MR. TRABOLD: No, Your Honor.
L1	THE COURT: So you are released today on the same
L2	terms and conditions that you have been under since you were
L3	arraigned. Do you understand that?
L4	THE DEFENDANT: Yes, Your Honor.
L5	THE COURT: Okay. Court's in recess until
L6	June 11th.
L7	MR. MISKO: Thank you, Your Honor.
L8	(Record closed).
L9	
20	CERTIFICATE
21	I, Richard T. Ford, certify that the foregoing
22	is a correct transcript from the record of proceedings in the
23	above-titled matter.
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25	Richard T. Ford